

THE LEGAL INSIGHT

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PENNSYLVANIA LEGISLATURE ABOLISHES JOINT LIABILITY

Pennsylvania finally has a Fair Share Act which, except for limited exceptions, abolishes joint liability among defendants. The Bill became effective on June 28, 2011, and applies to causes of action that accrue on or after the effective date. The Fair Share Act has been in the works for a long time. The same legislation was signed into law in 2002, but House Representative Bill DeWeese successfully challenged its enactment on the grounds that it was improperly handled in the Legislature. The legislation was passed again in 2006, but was vetoed by Governor Rendell.

The Fair Share Act institutes two major changes that affect the liability of defendants in cases where more than one defendant is potentially liable to a plaintiff. First, the Fair Share Act abolishes joint liability, with a few express exceptions. This means that a defendant is no longer responsible for another defendant's share of the liability if the other defendant is unable to pay. A defendant's liability will still be joint and several in the following actions: (1) intentional misrepresentation; (2) intentional tort; (3) where the defendant has been held liable for not less than 60% of the total liability apportioned to all parties; (4) a release or threatened release of a hazardous substance under Section 702 of the Hazardous Sites Cleanup Act, P.L. 756, No. 108; and (5) a civil action in which a defendant has violated section 497 of the Liquor Code, P.L. 90, No. 21 (Dram Shop Claim).

The second major change resulting from the passage of the Fair Share Act is that a jury is now allowed to apportion liability to non-defendants who have entered into a release with a plaintiff. Prior to the passage of the Fair Share Act, in order to have liability apportioned to someone, the person or entity had to be a defendant in the lawsuit. Now, a defendant may introduce evidence of the liability of any person or entity who has entered into a release with a plaintiff, and the jury can consider this evidence when apportioning liability, without such a person or entity being joined in the litigation. This not only avoids the burden of joining a settled defendant, but also allows a jury to apportion liability to a person or entity who cannot be sued, for instance, due to a bankruptcy stay or discharge.

For more information regarding the Fair Share Act and issues relating to liability, contact Kathy K. Condo at (412) 394-5453 or kcondo@babstcalland.com, Timothy C. Wolfson at (412) 394-6536 or twolfson@babstcalland.com, or Alana E. Rutkowski at (412) 773-8702 or arutkowski@babstcalland.com.